

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Southern Industrial Redevelopment)
 Dist. 1, Map 15, Control Map 15, Parcel 7.00,) Montgomery County
 S.I. 000 & 001)
 Industrial Property)
 Tax Year 2004)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued at \$11,230,000 as follows:

<u>S.I. 000</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,176,000	\$9,776,900	\$10,952,900	\$4,381,160

S.I. 001			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$277,100	\$ -0-	\$277,100	\$69,275

The taxpayer, Southern Industrial Redevelopment Company (“SIRCO”), filed this appeal with the State Board of Equalization. The administrative judge conducted a hearing in this matter on December 12, 2005 and left the record open until February 1, 2006 for the filing of post-hearing memoranda or proposed findings. SIRCO was represented by L. Marshall Albritton, Esq. The Montgomery County Assessor of Property, Ronnie Boyd, was represented by Roger A. Maness, Esq.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 297.74 acre site improved with thirty (30) buildings containing in excess of 500,000 square feet located on Guthrie Highway (U.S. Highway 79N) in Clarksville, Tennessee. Subject property was previously owned by UCAR Carbon Company, Inc. [“UCAR”] and utilized as a graphite electrode manufacturing facility.

SIRCO contended that subject property should be valued at \$1,875,000. In support of this position, SIRCO argued that subject property should be valued in accordance with the price it paid for the property on December 18, 2003. SIRCO introduced proof to show that it purchased subject property along with miscellaneous personal property for \$2,265,000. Of the \$2,265,000 purchase price, SIRCO allocated \$390,000 for the personalty. This was reported on SIRCO's 2004 tangible personal property schedule and accepted by the assessor of property. This left a balance of \$1,875,000 attributable to the real property and improvements.

The Purchase and Sale Agreement was executed on May 5, 2003, and the closing occurred on December 18, 2003. As part of the transaction, UCAR continued to lease a portion of four buildings containing approximately 158,410 square feet for \$2.22 per square foot.¹

The assessor contended that subject property should remain valued at \$11,230,000. In support of this position, the testimony and appraisal report of Robert W. Hunt, CAE was introduced into evidence. Mr. Hunt relied solely on the cost approach and concluded that subject property had a value in exchange of \$11,362,900 on the relevant assessment date of January 1, 2004.

The assessor contended that SIRCO's purchase of subject property on December 18, 2003 should not be adopted as the basis of valuation for essentially six (6) reasons. First, UCAR had significantly downscaled its operations and was seeking to divest itself of this particular property while protecting itself far into the future from potential environmental claims. Second, subject property had been listed for sale for only three (3) months when SIRCO, the principal of whom was also represented by the listing agent's firm, submitted a proposed letter of intent to purchase subject property. Third, the fair market value of subject property cannot be determined by a single sale. Fourth, it is unclear how SIRCO even determined what price it was willing to pay for subject property. Fifth, the deed contained restrictions on the use of subject property for a period of fifty (50) years. Sixth, the transaction included the leasing back to UCAR of approximately 150,000 square feet.

In support of its contention that SIRCO's purchase was an arm's-length transaction indicative of market value, SIRCO relied heavily on the testimony of Marvin A. Maes, MAI, CRE. Mr. Maes has considerable experience with the property, having appraised it on separate occasions (for tax years 1994 and 1997). Mr. Maes did not perform a new appraisal for tax year 2004, and did not give an opinion regarding the fair market value for that year. However, Mr. Maes did inspect the property shortly after the sale to document its condition, and he reviewed information regarding the sale to SIRCO. Mr. Maes testified that based on his inspection and the available information related to the sale that as an appraiser he would use the December 18, 2003 sale as a valid qualified sale and would cite it as a market sale in an appraisal report.

Mr. Maes maintained that the December 18, 2003 sale had all the conditions requisite to a fair market sale. Mr. Maes testified that the lease of some space at the property by the seller did not affect the sale in his opinion. According to Mr. Maes, although he did not

¹ The square footage being leased includes the American Headquarters Building, the Engineering and Maintenance Office and Garage, the Administration Building, and the Machine Shipping and Storage Facility. The initial term of the lease is for three years, with successive annual one (1)-year renewals up to a maximum of ten (10) one (1)-year renewals. The lease provides for rental adjustments based upon the CPI. The lease requires UCAR to pay for all maintenance and insurance.

perform a market rent study, the rent appeared consistent with market rent for similar space based upon information he had regarding the existing rental market. Mr. Maes also testified that in his opinion the previously summarized restrictions on use did not affect the value of the property.

The taxpayer also relied on the testimony of Fred Gillham, a principal in SIRCO, and Tony Beyer, an employee of SIRCO. These witnesses testified regarding the sale and the use and development of the property since the sale.

The taxpayer also offered into evidence the testimony of John Ward. Mr. Ward is employed by Colliers International which was the real estate broker that marketed and sold subject property. Mr. Ward testified subject property was listed for sale at \$6,000,000, but that represented the most optimistic number Colliers determined a buyer would pay. The pricing opinion prepared for UCAR by Colliers estimated various values ranging from \$3,000,000 to \$6,000,000 depending upon the buyer's intended use of the property.

Mr. Ward testified that Colliers listed subject property for sale on November 11, 2002 at a price of \$6,000,000. Mr. Ward stated that subject property was intensively marketed. A professional flyer was produced and widely distributed to prospects, commercial brokers and individuals involved in economic development. Notice of the listing was e-mailed to all 4,400 Colliers agents around the world and to the 1,900 broker members of the Society of Industrial and Office Realtors.

Mr. Ward testified that Norman Ray of his firm was representing Mr. Gillham and secured a proposed letter of intent on February 13, 2003 and an actual letter of intent on February 28, 2003. As previously noted, the Purchase and Sale Agreement was signed on May 5, 2003, and the closing occurred on December 18, 2003. According to Mr. Ward, the listing agreement was extended and renewed during this time and the property was left on the market after the contract was signed and the sale was pending. No other offers were received during this time.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge reluctantly finds that the subject property should remain valued at \$11,230,000 based upon the presumption of correctness attaching to the decision of the Montgomery County Board of Equalization.

As will be discussed below, the administrative judge finds that SIRCO effectively made the administrative judge's decision an "all or nothing proposition" by relying solely

on its purchase as the basis of valuation. The administrative judge has little doubt that additional evidence would have supported a significant reduction in value.²

Since the taxpayer is appealing from the determination of the Montgomery County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that SIRCO did not introduce an appraisal of subject property into evidence. Nor did SIRCO introduce a cost, sales comparison, or income approach into evidence. Instead, SIRCO simply argued that its purchase of subject property should be adopted as the basis of valuation.

Respectfully, the administrative judge finds that SIRCO's purchase of subject property lacks probative value and cannot be adopted as the basis of valuation for the reasons discussed below. Moreover, the administrative judge finds that even if it is assumed *arguendo* that the sale has some probative value, the sale by itself does not constitute sufficient proof to establish the fair market value of subject property by a preponderance of the evidence.

The administrative judge finds Mr. Maes unquestionably possesses more appraisal expertise than any of the other witnesses. Indeed, the administrative judge has previously placed most weight on Mr. Maes' analysis in prior appeals involving subject property for tax years 1994 and 1997-1998.³

The administrative judge finds that although Mr. Maes could have potentially given testimony with significant probative value, his testimony was largely irrelevant and lacks probative value with respect to the ultimate issue in this appeal – subject property's fair market value as of January 1, 2004. The administrative judge finds Mr. Maes testified that he could not express an opinion concerning subject property's fair market value as of January 1, 2004. Moreover, Mr. Maes stated that he has not updated his 1997 appraisal nor otherwise appraised subject property since 1997. Finally, Mr. Maes testified that the market for subject property fundamentally changed between 1997 and January 1, 2004. Indeed, the administrative judge finds that subject property was specifically designed and built for graphite electrode manufacture and used as such until operations ceased in 2003.

The administrative judge finds Mr. Maes testified that the purpose of his testimony was to establish that SIRCO's December 18, 2003 purchase of subject property was

² For example, a strong argument could seemingly be made that the \$6,000,000 list price constituted the absolute upper limit of value. Absent additional evidence such as a sales comparison approach, however, the administrative judge finds the listing standing by itself cannot be adopted as the basis of valuation. Indeed, the Assessment Appeals Commission ruled in *Leo Dickerson (Airways Apartments)* (Madison Co., Tax Year 1989) that evidence of an unanswered asking price does not constitute a sales comparison approach.

³ The parties' contentions of value in the prior appeals were significantly higher because subject property was a viable going concern at those points in time and was valued in use rather than in exchange.

indicative of its market value. Respectfully, the administrative judge finds Mr. Maes is simply not in a position to reach such a conclusion absent additional analysis. The administrative judge finds the fact Mr. Maes attempts to keep track of sales of industrial properties does not enable him to reliably estimate subject property's market value. For example, the administrative judge finds that at a minimum generally accepted appraisal practices require that comparable sales be adjusted. The administrative judge finds that if Mr. Maes cannot express an opinion of market value, it is disingenuous for him to state that SIRCO's purchase constitutes a reliable indication of market value.

The administrative judge finds that one sale does not necessarily establish market value. As observed by the Arkansas Supreme Court in *Tuthill v. Arkansas County Equalization Board*, 797, S.W.2d 439, 441 (Ark. 1990);

Certainly, the current purchase price is an important criterion of market value, but it alone does not conclusively determine the market value. An unwary purchaser might pay more than market value for a piece of property, or a real bargain hunter might purchase a piece of property solely because he is getting it for less than market value, and one such isolated sale does not establish market value.

The administrative judge finds that SIRCO's purchase of subject property lacks probative value for any of several reasons. The administrative judge would initially observe that subject property had been listed for sale for only approximately three (3) months when the proposed letter of intent was obtained from SIRCO. The administrative judge finds it puzzling why UCAR would accept an offer so far below the pricing opinion that was the basis for the listing when the property had been on the market for only three months.⁴ Moreover, the administrative judge finds that the testimony of the various witnesses makes it reasonable to conclude that the purchase price was the result of a seller needing to divest itself of this property motivated by concerns other than obtaining market value by getting together with a buyer which was willing to accept restrictions imposed by the seller if it could acquire the subject property at a bargain. Indeed, when asked on cross-examination how SIRCO arrived at the purchase price, Mr. Gillham stated that he had a "gut feel" and based the offer from his past experience.⁵

As previously noted, as part of the transaction UCAR was allowed to lease approximately 158,410 square feet at \$2.22 per square foot. The administrative judge finds that no attempt was made to adjust the sale to account for this factor. For example, if market rent for the office space exceeds \$2.22 per square foot, some type of cash equivalency calculation would presumably be necessary. The administrative judge finds

⁴ Moreover, the administrative judge finds it reasonable to assume that the December and January holiday period is a relatively slow time for sales of industrial property.

⁵ Mr. Gillham testified that he has purchased approximately a dozen industrial plants in the past.

that if UCAR was the beneficiary of a below-market rental rate it is no different than a buyer receiving atypical financing.

Based upon the foregoing, the administrative judge finds that SIRCO’s December 18, 2003 purchase of subject property lacks probative value and cannot be adopted as the basis of valuation. Alternatively, the administrative judge finds that if the purchase is assumed to have some probative value, additional evidence must be introduced to establish the fair market value of subject property by a preponderance of the evidence.

The administrative judge finds it technically unnecessary to address Mr. Hunt’s appraisal report since SIRCO failed to establish a prima facie case. Nonetheless, in order to facilitate any possible future settlement negotiations, the administrative judge finds a brief comment appropriate.

The administrative judge finds that the taxpayer raised a number of legitimate questions concerning Mr. Hunt’s report. Moreover, Mr. Hunt relied strictly on the cost approach despite stating on page 20 of his report that “Mr. Maes’ [1994] appraisal remains the strongest proof of the subject’s value via the sales comparison approach. This approach to value was not used.” Respectfully, the administrative judge has little doubt that a sales comparison approach and various modifications to Mr. Hunt’s cost approach would result in a conclusion of value for below the current appraised value.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2004:

<u>S.I. 000</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
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It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be**

filed within thirty (30) days from the date the initial decision is sent.”

Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 27th day of February, 2006.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Marshall Albritton, Esq.
Roger A. Maness, Esq.
Ronnie D. Boyd, Assessor of Property